IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13081 of 2000
with
SPECIAL CIVIL APPLICATION NO. 5214 OF 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL TRANSPORT SERVICE - Petitioner(s)
Versus
CHANDRASHEKHAR I. PANDE - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner(s) : 1,
MR VM DHOTRE for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 08/08/2007

ORAL JUDGMENT

None appears for the petitioner in Special Civil Application No. 5214 of 2001; Shri H.S. Munsha,

learned counsel for the respondent. The said petition is dismissed for want of prosecution. Rule is discharged. No costs. Interim relief, if any, is vacated.

2. Shri H.S. Munshaw, learned counsel for the petitioner; none for the respondent in Special Civil Application No. 13081 of 2000. As none appears for the respondent, I propose to proceed exparte.

3. The petitioner, Ahmedabad Municipal Transport Service, being aggrieved by the order dated 10.10.2000 passed by the Industrial Tribunal in Application [IT] No. 237/96 [Reference [IT] No. 466/92] is before this Court with a submission that the Court below was unjustified in rejecting their application for approval.

4. From the records, it would appear that a charge sheet was served upon the workman, wherein, it was alleged that on the auspicious occasion of Bhai-Duj, the petitioner instigated other workmen and did not allow them to enter the work premises even though the said day was working day. Even thereafter, requests were made to the

respondent-workman but he did not allow the workmen to work. Though other charges were levelled against the respondent in the charge sheet, but learned counsel for the petitioner has not referred to the said charges, therefore, it is not necessary to look into the other charges. The petitioner required the workman to file his reply to the charge sheet, the workman accordingly filed the same. The Inquiry Officer proceeded with the inquiry and ultimately recorded a finding into the guilt of the present respondent. The disciplinary authority thereafter issued a notice to the respondent against his termination, the respondent accordingly filed his reply but after rejecting the said reply, the petitioner terminated the services of the respondent and thereafter made an application to the Industrial Tribunal for approval. The parties appeared before the Industrial Tribunal and requested for production of the records. The present petitioner who was supposed to be in possession of the records did not produce the same. However, Shri Munshaw

submits before this Court that the records were filed in some other proceedings, therefore, the same could not be produced. On being asked that whether any application for summoning the records was made to the subordinate Tribunal or any application for refund of the records was made to the other Court, Shri Munshaw fairly submitted that no such steps were taken. As the records were not produced, the learned Industrial Tribunal came to a conclusion that provisions of Section 33 of the Industrial Disputes Act were not observed in their true spirit, it accordingly rejected the application for approval.

5. Shri Munshaw, learned counsel for the petitioner submits that present is a case where appropriate opportunity to lead evidence and to prove the misconduct on the part of the workman should have been afforded to the petitioner establishment. In the opinion of this Court, the Industrial Tribunal did not commit any wrong in rejecting the said prayer, because, present was not a Reference wherein an inquiry was to be

made into the misconduct of the workman or into the validity of the inquiry. Present was the case where on strength of the findings recorded in the alleged inquiry, the present petitioner has come to the Industrial Tribunal with a submission that approval be granted. If the departmental proceedings were conducted in a manner not known to law and scope of the approval application could not be enlarged, then, no opportunity was required to be given to the petitioner to prove the alleged misconduct.

6. Shri Munshaw also submitted that the Court below should have taken into consideration that the records which were required to be produced in the Industrial Tribunal were filed in some other Court and it disabled the petitioner from producing the records. In the opinion of this Court, this argument would also not provide any legal foundation in favour of the present petitioner, because, they never made any application to the subordinate Tribunal for summoning the records nor they made any application to the other Court for return of the

records.

7. The Court below was absolutely justified in rejecting the application. The petition is dismissed. Rule is discharged. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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